

ID: CCA_2010101516213964

Number: **201044011**

Release Date: 11/5/2010

Office:

UILC: 6013.00-00, 6013.02-00

From:

Sent: Friday, October 15, 2010 4:21:43 PM

To:

Cc:

Subject: Question Concerning section 6013

You asked whether a taxpayer can elect joint status after the Service has filed a substitute for return under section 6020(b) and has issued a notice of deficiency to the taxpayer. The Tax Court held in Millsap v. Commissioner, 91 T.C. 926, 936-937 (1998), acq. in result, AOD-1992-03, that a taxpayer is not foreclosed from electing joint status after the Service has prepared a return under section 6020(b) because the return does not constitute a "separate return" filed by the individual for purposes of section 6013(b). Because the taxpayer has not previously filed a separate return in this case, section 6013(b) does not apply, therefore, the taxpayer may file a joint return provided that none of the exceptions in section 6013(a) apply.

Based on the facts provided in your e-mail and our phone conversation, the taxpayer's spouse is now deceased and no executor or administrator was appointed. Section 6013(a)(2) states that "in the case of death of one spouse the joint return may be made by the surviving spouse . . . if no return for the taxable year has been made by the decedent, no executor or administrator has been appointed, and no executor or administrator is appointed before the last day prescribed by law for filing the return of the surviving spouse." Therefore, the taxpayer is not precluded from filing a joint return with respect to himself and his deceased spouse. See IRC section 6013(a)(2).